

AMENDED IN SENATE MAY 19, 2009

AMENDED IN SENATE MARCH 31, 2009

**SENATE BILL**

**No. 705**

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**Introduced by Senator Lowenthal**

February 27, 2009

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An act to add Section 1172 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 705, as amended, Lowenthal. Employee rights: exhaustion of administrative remedies.

Under existing law, where a statute provides an employment right and sets forth administrative procedures that must be followed to redress a violation of that right, an employee must first exhaust those administrative procedures before seeking redress from the courts in a civil action. Additionally, decisional law has required employees to exhaust an employer's administrative remedies to redress violations of statutory law even where the statute creating the right does not require the exhaustion as a prerequisite to the filing of a civil action.

This bill would provide that exhaustion of an employer's internal administrative remedies or judicial review of a decision of an administrative agency is not a precondition, *and does not need to be judicially reviewed by a petition for a writ of mandate*, for the filing of a civil action alleging a violation of a right that the Legislature determines to be based on a fundamental public policy of the state; ~~unless the Legislature expressly requires the exhaustion of the employer's internal administrative remedies or judicial review of an administrative decision in the statute that establishes the cause of action. This bill would further provide that the results of an administrative~~

adjudication by an employer regarding an allegation of a violation of an employee right that the Legislature determines to be based on a fundamental public policy of the state are admissible as evidence in a civil action involving the same rights and parties.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1172 is added to the Labor Code, to read:

2 1172. (a) Exhaustion of an employer's internal administrative  
3 remedies, such as a grievance procedure, or judicial review of a  
4 decision of an administrative agency, is not a precondition for a  
5 civil action alleging a violation of a right that the Legislature  
6 determines to be based on a fundamental public policy of the state;  
7 ~~unless the Legislature expressly requires the exhaustion of the~~  
8 ~~employer's internal administrative remedies or judicial review of~~  
9 ~~an administrative decision in the statute that establishes the cause~~  
10 ~~of action.~~

11 ~~(b) The results of an administrative adjudication by an employer~~  
12 ~~regarding an allegation of a violation of an employee right that the~~  
13 ~~Legislature determines to be based on a fundamental public policy~~  
14 ~~of the state are admissible as evidence in a subsequent civil action~~  
15 ~~involving substantially the same rights and substantially the same~~  
16 ~~parties, unless otherwise expressly excluded by the Legislature or~~  
17 ~~in an applicable collective bargaining agreement.~~

18 *(b) A determination resulting from an employer internal process*  
19 *or an administrative hearing pursuant to subdivision (a) of Section*  
20 *1094.5 of the Code of Civil Procedure regarding an allegation of*  
21 *a violation of an employee right that the Legislature determines*  
22 *to be based on a fundamental public policy of the state need not*  
23 *be judicially reviewed by way of a petition for writ of mandate as*  
24 *a condition to the filing of a civil action, unless the Legislature*  
25 *has expressly so required. However, the final determination*  
26 *resulting from an employer internal process or an administrative*  
27 *hearing under this subdivision may be admissible as evidence in*  
28 *a subsequent lawsuit involving the same, or substantially the same,*  
29 *rights and the same, or substantially the same parties, at the trial*  
30 *court's discretion and subject to the rules of evidence, unless*  
31 *specifically excluded by the Legislature.*

1     (c) “A fundamental public policy of the state” as used in this  
2     section means a policy that affects society at large rather than an  
3     individual, is fundamental and substantial, and is tethered to a  
4     constitutional or statutory provision.

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